

1 If preponderance of the evidence, which is the
2 standard they use in civil cases, was a house, it would look
3 like that.

4 If clear and convincing evidence, which I
5 described yesterday as somebody wanted to take our grandson
6 away from us, they would have to prove to a court by clear and
7 convincing evidence. If clear and convincing evidence was a
8 house, it would look like that.

9 And if proof beyond a reasonable doubt was a
10 house, it would look like that.

11 We ask for your verdict of not guilty on behalf
12 of Mr. Breimeister.

13 Now Mr. Schaffer is going to talk to you about --
14 come on up -- is going to talk to you about a situation that
15 he's smarter than I am. He's going to describE to you these
16 PBM things.

17 Thank you.

18 MR. SCHAFFER: Your Honor, how much time do we have?

19 THE COURT: Seven minutes and 45 seconds.

20 MR. SCHAFFER: Thank you.

21 May it please the Court, counsel for the
22 government, counsel for the defense, defendants, ladies and
23 gentlemen of the jury.

24 Soon after Scott Breimeister went to work
25 full-time for the pharmacies in 2014, the insurance companies,

1 through the PBMs, began to attack and Mr. Breimeister spent the
2 next two and a half years at war with the PBMs for the very
3 survival of the companies that he was charged with leading.

4 You're going to hear a lot of testimony about how
5 prescription drugs get filled by pharmacies. I'm going to
6 focus the next few minutes on the insurance piece of that
7 puzzle, what happens behind the scenes, how PBMs control the
8 prescription drug business. They have all the power, and they
9 abuse it.

10 What are PBMs? They literally are middlemen
11 between insurance companies, drug manufacturers and pharmacies.
12 All they do is process information and money, kind of like
13 credit card companies.

14 You go into a store to buy merchandise. That
15 transaction is between you and the business, but a credit card
16 company processes the information and the money and they take a
17 cut or a percentage of every single transaction.

18 PBMs are not regulated by the government the same
19 way that insurance companies are. They have different
20 treatment. They are a powerful part of this industry, and they
21 effectively control the marketplace.

22 Now, there are three key relationships in the
23 industry.

24 Number 1, the relationship between the PBMs and
25 the insurance companies like Aetna, Cigna, Humana, Medicare.

1 Number 2, the relationship between PBMs and the
2 drug manufacturers.

3 Number 3, the relationships between the PBMs and
4 the pharmacies. Let me be clear. PBMs make a lot of money off
5 of each one of these relationships.

6 Let's start with the relationships with the
7 insurance plans. Health insurance companies decided at some
8 point that it was too big of a pain for them to deal with the
9 prescription drug part of the business, so they decided to
10 outsource that to the middlemen, the PBMs.

11 The insurance plans paid the PBMs a bunch of
12 different fees, fees to actually administer or oversee and
13 manage the drug benefits, fees for every single drug that gets
14 prescribed by a pharmacy, fees for the PBMs to process every
15 single claim from the pharmacy, like every single credit card
16 transaction that you engage in with a business.

17 PBMs make tons of money from the insurance plans.

18 The second relationship: The drug manufacturers.
19 They do the research, they do the development, they invent the
20 drugs, they make the drugs. And no patient is going to get the
21 drug if an insurance plan isn't going to pay for the drug.

22 So who's responsible for deciding which drugs out
23 there are going to get paid for? I bet you can guess. It's
24 the PBMs. They come up with a list for every health insurance
25 plan of which drugs are going to be covered. That list is

1 called the drug formulary.

2 And guess how the manufacturers get their drugs
3 approved by the PBMs. They pay the PBMs money to put their
4 drugs on the formulary. The industry uses a nice little clean
5 word for that: Rebate. That sounds harmless.

6 Let me be clear. It is a kickback. It is a
7 legal kickback, but it is a kickback. Manufacturers of
8 drugs --

9 MS. REMIS: Objection, Your Honor. This is
10 argumentative.

11 THE COURT: Sustained.

12 MR. SCHAFFER: So they make money off of the rebates.

13 The third relationship between the PBMs and the
14 pharmacies themselves. PBMs create networks. These are
15 insurance networks. The pharmacy as the provider has to be
16 part of the club or the network for the insurance to pay for
17 the prescription. If the pharmacy is not part of a PBM's
18 network, it cannot survive because it won't be reimbursed by
19 the PBM money for the drugs that it's dispensing to patients.
20 The networks are critical.

21 If there's one thing you remember from what I had
22 to say I hope it's this: PBMs set the prices for drugs.
23 Pharmacies do not set prices. And the PBMs get more money from
24 the insurance plans than they pass along to the pharmacies, and
25 the profit is called the spread.

1 They also make money by auditing the pharmacies,
2 by going in and trying to choke off the business, by saying we
3 want to look at all these prescriptions and burying the
4 pharmacies in paperwork. These are independent pharmacies.
5 Relatively small. This isn't CVS. This isn't Walgreens. This
6 isn't Walmart.

7 Why do they do this? In addition to making money
8 off of the audits, the PBMs have their own pharmacies and they
9 would rather drive the prescriptions to their own pharmacies so
10 they can make more money.

11 So the PBMs are literally competing with the
12 independent pharmacies, including the ones that Mr. Breimeister
13 oversaw.

14 Who is Express Scripts? They will also be
15 referred to as ESI? They are the biggest, baddest bully PBM on
16 the block.

17 MS. REMIS: Objection, Your Honor. Argumentative.

18 THE COURT: Sustained.

19 MR. SCHAFFER: Express Scripts terminated
20 OmniPlus Pharmacy from their network in 2014. That was before
21 Mr. Breimeister was the president of the pharmacy.

22 Express Scripts alleged that the pharmacies
23 violated the contract, not the law, the contract by waiving and
24 discounting patient co-pays.

25 Mr. Breimeister and Mr. Carr were told that that

1 was false. In other words, they were told that the pharmacies
2 were following the rules of the contract.

3 Losing the Express Scripts network agreement
4 would kill that pharmacy. Mr. Breimeister was in charge of
5 business development for the pharmacy. He knew that the only
6 way the business could continue to provide these safe,
7 effective drugs --

8 THE COURT: One minute.

9 MR. SCHAFFER: -- to patients who needed them was by
10 suing Express Scripts.

11 As soon as Mr. Breimeister pushed to file that
12 lawsuit, Dan Milosevic quit one month later and Mr. Swiencinski
13 and Dr. Redko turned to Mr. Breimeister and Mr. Carr and said,
14 "Will you now run the business?"

15 That is when the decision was made for employees
16 to become owners of the pharmacies, and I'm going to take the
17 last few seconds I have to address that.

18 Mr. Breimeister and Mr. Carr sold the pharmacies
19 that they ran to valued employees because the PBMs had already
20 marked them for fighting back and bullies will continue to try
21 and --

22 MS. REMIS: Objection, Your Honor. Argumentative.

23 THE COURT: Sustained.

24 MR. SCHAFFER: Mr. Breimeister was trying to avoid more
25 wrongful terminations by PBMs. This was about commercial

1 survival --

2 THE COURT: Counsel, your time has expired.

3 MR. SCHAFFER: -- not fraud.

4 Thank you, Judge.

5 THE COURT: Does counsel for Dr. Redko wish to make an
6 opening statement at this time?

7 MR. LAVINE: Yes, I do, Your Honor.

8 THE COURT: Do you need a moment to set up?

9 MR. LAVINE: Please.

10 Thank you, Your Honor. I'm prepared.

11 THE COURT: You may proceed, sir.

12 MR. LAVINE: Good morning.

13 THE JURY: Good morning.

14 THE COURT: Dr. Vladimir Redko was born in 1956 in
15 Moscow, then the former Soviet Union. Life was hard in the
16 Soviet Union; and after graduating medical school in Moscow, he
17 and his family were able to flee Russia and eventually found
18 their way to the United States as refugees.

19 In 1982, from very humble beginnings, he embarked
20 on a highly successful career in medicine that has now spanned
21 40 years. You will hear that he is one of the most respected
22 and accomplished pain doctors in Houston. His career includes
23 being a distinguished professor of medicine.

24 You will learn that his focus has been on making
25 life better for his patients, always seeking to ease their pain